IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

WP(C).No. 16478 of 2004(J)

PETITIONER:

CHITHRABHANU K.C. LECTURER IN ART HISTORY AND AESTHETICS, COLLEGE OF FINE ARTS, THIRUVANANTHAPURAM.

BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SRI.T.P.DEYANANTHAN
SMT.SREEDEVI KYLASANATH

RESPONDENTS:
----

1. **THE STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF TECHINICAL EDUCATION, THIRUVANANTHAPURAM.**

3. **THE PRINCIPAL, COLLEGE OF FINE ARTS, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER S5RI. P.A. SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE G.O.(MS) NO.280/86/H.EDN. DTD. 14/11/1986.

EXT.P2: COPY OF G.O.(MS) NO.164/87/H.EDN. DTD. 6/06/1987.

EXT.P3: COPY OF THE G.O.(P) NO.215/88/H.EDN. DTD. 11/10/1988.

EXT.P4: COPY OF THE BIO-DATA OF THE PETITIONER'S CONTRIBUTION TO ART AND AESTHETIC VALUES ENRICHING HIS PROFESSIONAL \ CALIBRE.

EXT.P5: COPY OF THE LETTER NO.EC2.32093/96/DTS DTD. 25/09/96 ISSUED BY THE 2ND RESPONDENT.

EXT.P6: COPY OF THE REPRESENTATION DTD. 22/09/1999 SUBMITTED TO THE 1ST RESPONDENT.

EXT.P7: COPY OF LETTER NO.CFA.A5/376/2000 DTD. 8/08/2000 ISSUED BY 3RD RESPONDENT.

EXT.P8: COPY OF THE REPRESENTATION DTD. 15/03/2001 SUBMITTED TO THE 1ST RESPONDENT.

EXT.P9: COPY OF THE JUDGMENT DTD. 23/07/2003 IN WP(C) NO.23443/2003.

EXT.P10: COPY OF THE HEARING NOTE DTD. 10/11/2003 SUBMITTED BY THE PETITIONER.

EXT.P11: COPY OF THE AFFIDAVIT AND I.A.NO.16443/2003 DTD.9/12/2003 FILED BY THE 1ST RESPONDENT IN WP(C) NO.23443/03.

EXT.P12: COPY OF THE I.A. DTD. 26/02/2004 IN WP(C) NO.23443/03 FILED BY THE 1ST RESPONDENT SEEKING EXTENTION OF TIME.

EXT.P13: COPIES OF THE ARTICLES OF THE PETITIONER PUBLISHED IN VARIOUS DAILY NEWSPAPER AND WEEKLY.

EXT.P14: COPY OF THE WRIT UP OF THE BOOK 'VAISHNAVISM IN INDIAN ARTS' IN WHICH THE PETITIONER'S CONTRIBUTION IS RECOGNISED.

EXT.P15: COPY OF THE COMPLEMENTARY CERTIFICATE ISSUED TO THE PETITIONER BY THE FORMER PRINCIPAL OF THE COLLEGE OF FINE ARTS DTD. 1/10/03.

...2/-

WPC.NO.16478/2004 J

EXT.P16: COPY OF THE ORDER G.O.(RT) N O.325/2004/H.EDN. DTD. 8/03/2004.

EXT.P17: COPY OF THE G.O.(MS) NO.41/2004/H.EDN. DTD. 5/03/2004.

EXT.P18SERIES: COPY OF THE CERTIFICATES OF THE REFRESHER COURSE CONDUCTED FROM 10/01/2004 TO 31/01/2004.

EXTP19: COPY OF KERALA UNIVERSITY REGULATION RELATING TO QUALIFICATION OF TEACHERS PART – I GENERAL.

EXT.P20: COPY OF COMMUNICATION NO.EG/II/25879/2003 DTD. 6/07/2004 ISSUED BY 2ND RESPONDENT TO THE 3RD RESPONDENT.

EXT.P20: COPY OF G.O.(RT) NO.900/05/H.EDN. DTD. 26/05/2005.

EXT.P21: COPY OF THE REPRESENTATION DTD. 12/07/2004 SUBMITTED TO THE 2ND RESPONDENT THROUGH 3RD RESPONDENT.

EXT.P22: COPY OF THE COMMUNICATION NO.CFA.5/542/2004 DTD. 15/07/2004.

/TRUE COPY/

KSS

T.R.RAMACHANDRAN NAIR, J.

W.P.(C).NO.16478 OF 2004

Dated this the 14th day of March, 2007.

JUDGMENT

The petitioner is now working as a Lecturer in Art, History and Aesthetics in the College of Fine Arts, Thiruvananthapuram. He entered service on 5.2.1986. Going by statutory rules governing promotion to the post of Professor, evidenced by Ext.P3, there are no avenues of promotion since there is no department of Art History and Aesthetics, in item No.3 (Professor Grade II). In the absence of such provisions there is no chance for the petitioner to get promotion. Pointing out the anomalies in respect of the Special Rules, the petitioner earlier approached this court by filing W.P.(C).No.23443/2003, which was disposed of by Ext.P9 judgment. This court taking note of the principles stated by the Apex Court that " an employee is entitled to have reasonable promotion chances in his career. Stagnation in the same post till retirement will breed inefficiency and in the light of Articles 14 and 16 of the Constitution of India, reasonable promotion prospects should be provided to all employees", directed the Government to consider and pass orders on Exts.P6 and P8 representation produced in that Writ Petition. There after the Government passed Ext.P16 order dated 8.3.2004 . The operative portion of Ext.P16 reads as follows:-

> "4. After hearing Shri. K.C.Chithrabhanu Government have examined the Exts.P6 and P8 representations and order that Shri.K.C.Chithrabhanu, Lecturer in Art History and

> Aesthetics, College of Fine Arts, Thiruvananthapuram is not eligible for promotion to the post of Professor Grade II in Painting Department as the petitioner does not possess the qualification, prescribed for the post in the Special Rules and hence the request of Shri.K.C.Chithrabhanu, for promotion as Professor Grade II in Painting is rejected. The direction in the judgment referred first is thus implemented".

2. A reading of the above order will show that the Government has not considered the issue in the light of the grievance raised by the petitioner that there is absence of specific provision for promotion to the category of Professor Grade II in the Special Rule, to enable the petitioner to get promotion. The Government did not consider the issue in the light of the statement of law reiterated by this court in the judgment in W.P.(C). No.23443/2003. The only reason stated by the Government is that the petitioner is not eligible for promotion in the Painting Department as the petitioner did not possess the qualifications prescribed by the Special Rules. The above reason stated by the Government is only by way of side lining the specific grievance raised by the petitioner before the Government. Actually the Government should have considered the question in the light of the fact that petitioner is facing stagnation. The counsel for the petitioner relied upon Ext.P17 to show that in respect of the post of Studio Assistant Grade I held by one Kunnuvila Murali, Government has relaxed the qualification for promotion in Special Rules, and granted sanction for promoting him as Lecturer in Sculpture.

The point that was examined in the said order is that there is no provision in the Special Rules for promotion as Lecturer from the post of Studio Assistant Grade I. The petitioner is strongly relying on Ext. P17 to contend that in the case of the petitioner also a similar order should have been passed by the Government by relaxing the provisions of Special Rules.

3. Whether the provisions of Special Rules is to be relaxed by the Government, in favour of an employee, is entirely for the Government to decide. If the petitioner files a representation in this regard within one month from the date of receipt copy of this judgment, Government will consider the same on merits. Apart from that in Ext.P16 none of the issues raised by the petitioner have been considered as directed by the judgment in W.P.(C).No. 23443/2003. The Government has failed to apply their mind while rejecting the representation filed by the petitioner in view of the observation made in the above judgment. Therefore I quash Ext.P16 and direct the first respondent to reconsider Exts.P6 and P8 representations on their merits afresh and pass appropriate order within two months from the date of receipt of a copy of this judgment.

Writ Petition is disposed accordingly.

T.R.RAMACHANDRAN NAIR, JUDGE.

bkn